

"I must entertain the motion, further, because a 'motion to adjourn is always in order,' with certain exceptions, and the present case does not constitute one of those exceptions. The President of the Senate can only declare the will of this body, expressed in a constitutional mode. And in obedience to that expressed will, there being a clear majority of all Senators *present*, voting for the motion to adjourn till 3:30 o'clock, I hereby declare the Senate adjourned till the hour named."

#### AFTERNOON SESSION.

Senate met pursuant to adjournment. President in the chair. Roll called. No quorum present.

Senator Guy moved to adjourn until to-morrow morning at 9 o'clock.

Lost.

Senator Moore moved to adjourn until 4 o'clock p. m.

Carried.

Senate met according to adjournment. Roll called. No quorum present.

On motion of Senator Wortham, the Senate adjourned until to-morrow at 9 o'clock a. m.

#### EIGHTY-NINTH DAY.

SENATE CHAMBER,  
AUSTIN, TEXAS, August 1, 1876. }

The Senate met pursuant to adjournment. President in the chair. Roll called. Quorum present. Prayer by the Rev. Mr. Stanton, Chaplain of the House.

The journal of yesterday adopted.

House Bill No. 412, "An Act making appropriations for deficiencies for the fiscal year beginning September 1, 1875, and ending August 31, 1876, and previous years, being unfinished business, was taken up, pending the amendments of the committee.

On motion of Senator McLeary, fifty copies were ordered printed and made the special order for to-morrow at 11 o'clock a. m., and from day to day until disposed of.

Senator Terrell arose to a question of privilege and presented the following protest:

We, the undersigned, a minority of the Senate of Texas, desire to enter this our solemn protest against the manner in which a majority of both Houses of the Legislature have attempted to evade the effect of a concurrent resolution to adjourn on the 31st day of July, 1876, at 12 o'clock m.

As evidence that we enter this protest in no captious spirit, we now announce to the majority of the Senate that if the Legislature shall this day adjourn *sine die*, we will join them in supporting a bill limiting the per diem pay of Senators to two dollars during the extra session.

JOHN S. FORD,  
L. J. STOREY,  
WELLS THOMPSON,  
A. P. McCORMICK,  
W. H. CRAIN,

JOHN D. STEPHENS,  
J. H. McLEARY,  
W. M. BURTON,  
A. W. TERRELL,  
T. J. McCULLOCH.

Senator Thompson presented the following protest against the passage of Senate Bill No. 303, "An Act for the relief of railroads," etc :

PROTEST.

The undersigned desire to respectfully protest against the announcement made by the President of the Senate, that Senate Bill No. 303, entitled, "An Act for the relief of railroads and other works of internal improvements in Texas," had passed. That bill contains an emergency clause, and received but eighteen votes, when, under the Constitution, such a bill could only become a law by the votes of two-thirds of all the Senators elect. This difficulty could not be obviated by dropping from the bill the emergency clause after a final vote, and before its presentation to the Governor for his signature. If this bill shall go to the Governor for his action, containing an emergency clause, after receiving less than a two-thirds vote, it is respectfully submitted by the undersigned, that his approval could not give it the force of law. If it should be presented without the emergency clause, which, if contained on the final vote by the Senate, then it would *not be* the bill upon which the Senate acted, and would have been changed without authority of law, and in disregard of legislative rules and precedent.

If the bill, notwithstanding its emergency clause and its failure to obtain a two-thirds vote, shall still be regarded as an act passed to take effect ninety days after the adjournment of this Legislature, the undersigned cannot still understand how it could have the force of law. The bill provides for an extension of only thirty days time to railroads after the adjournment of this session of the Legislature, so that upon a majority vote it would have to go into effect, if at all, sixty days after the expiration of the period of time upon which it is intended to operate.

The undersigned desire, in this connection, to call attention to the language of Section 39, Article 3, of the Constitution:

"SEC. 39. No law passed by the Legislature, except the general appropriation bill, shall take effect or go into force, until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency, which emergency must be expressed in a preamble, or in the body of the act, the Legislature shall, by a vote of two-thirds of all the members elected to each House, otherwise direct; said vote to be taken by yeas and nays, and entered on the journal."

If, in the face of this section, an act can have the force of law, which is to operate only on the first thirty days of time after our adjournment, which period must expire sixty days before the act passed by a majority vote can go into effect, it is difficult to understand the value of constitutional restrictions.

The bill, from its phraseology, seems intended to relieve railroad companies from causes of forfeiture incurred, even before the adoption of the ordinance of the convention in relation to railroads.

The undersigned submit that this is forbidden by the Constitution.

The ordinance, by its terms, only relieves railroads from the consequences of forfeitures incurred after its adoption, and up to the close of this session of the Legislature, while the Constitution, in Section 55 of Article 3, expressly declares, "that the Legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or *obligation* of any incorporation," etc. In the opinion of the undersigned, this clause of the

Constitution contains a limitation of the power of the Legislature to relieve any railroad from a failure to comply, before the adoption of the ordinance, with any objections contained in its charter.

The undersigned respectfully submit that while the Texas and Pacific Railroad Company is not mentioned in the body of the bill, it is idle to disguise the fact that it was intended more especially for the relief of that company. We will not pause to trace the history of that company and of its predecessors for the last twenty years, but we call attention to the fact that the act of March, 1875, contained the promise (among many others) that the Texas Pacific Railroad Company (meaning the Texas Pacific Railway Company) shall contract and put in running order as much as twenty miles of road between Brookston and Texarkana by the first day of November, 1875. It is a matter of public information that the said company did not construct any road between Brookston and Texarkana by the first day of November, 1875, and inasmuch as by the original provision contained in the act of May 2, 1873, the company should "forfeit all donations of land and reservation of lands upon forfeiture to construct as required by law," it follows that the failure of said company to build twenty miles of road between Brookston and Texarkana by the first day of November, 1875, was a cause of forfeiture of all donations of land and reservation of lands, unless it can be shown that the said company was relieved from the requirements of the act of March 15, 1875. It is pretended that the said company was so relieved by the ordinance of the Constitutional Convention, passed November 23, 1875. The language of the said ordinance plainly forbids any such conclusion; that language is as follows: "That in view of the financial misfortunes, no existing railroad company chartered or holding grants under this State, which has heretofore organized and commenced work in good faith shall be considered as having lost any of its rights, privileges or grants prior to the next session of the Legislature of this State by virtue of lapse of time *between now and that time.*"

It is not possible to give the ordinance of the Convention any retroactive effect. It cannot be interpreted to operate backwards, because the language is too plain to admit of any such interpretation.

It will be contended that it is harsh treatment to refuse relief to this company. In this view we cannot concur. While it is not our province or duty to inquire into or state how it happened that while Texas was exhausted by a civil war which drained her resources and impoverished her people, a donation of six millions of money was promised to non-resident capitalists owning a railway. Still, we do say that the Legislature in 1873 was under a species of coercion to make the large land grant and the immense reservation in favor of this company, to escape from the intolerable burden of that six millions subsidy debt. We can all remember the astonishment with which the tax-paying people, many of whom were then disfranchised, viewed the creation of that subsidy debt, and the universal dissatisfaction it produced. It is a matter of history that the act of 1873, which secured the company that immense reservation, was intended to preserve the State from the imputation of violated faith. That reason no longer exists, and the undersigned is unable to see why Texas should not now resume control of her own domain.

The people of this State know that the company is applying to the



Congress of the United States for the passage of an act to aid it by a guarantee of the interest on its bonds by the government. What is this but an admission by the company of its inability to construct its railway without such aid from the United States? Is it right, under such circumstances, for this State to permit a corporation to tie up from settlement so vast a public domain after repeated extensions, granted on assurances of an ability to perform in the future?

There are urgent reasons why Texas should not permit herself to be longer trifled with by this giant monopoly.

The claims of the school fund upon the public domain, as already defined by law, entitling it to four millions of acres more than the unlocated half remaining, to compensate for that quantity granted the International Railroad Company, the necessity to utilize three millions of acres set aside by the Constitution for the erection of public buildings and other purposes, and the importance of securing to actual settlers our land, are considerations that appeal to this Legislature to resume the control of that large body of territory heretofore reserved, in the hope of securing the construction of a Pacific railway. The four millions, over and above the half of the public domain which the State owes the school fund—the three millions dedicated by the Constitution to build a new State Capitol, and the one million also dedicated for the State University—in all, eight millions of acres—must be found out of a little over 33,000,000 of acres which is all the State now owns, after setting aside alternate sections for school purposes. Does not every consideration of our own interest and that of our posterity demand that these special claims should be first satisfied before longer pursuing our course of profligate and profitless generosity to mammoth corporations.

Texas has promised conditionally, by charter grants to railroads, 128,099,240 acres of the public domain. This quantity is about four times the amount of her disposable public domain.

In the opinion of the undersigned, the Legislature can not be justified in passing any act that will leave the Texas and Pacific Railway Company in a condition to claim a reservation of the public domain until the next session of the Legislature; and, also, to demand and receive twenty sections of land per mile for road constructed since the first day of November, 1875. The present Constitution does not permit the Legislature to grant more than sixteen sections of land per mile to any railroad company, and forbids any reservation of lands for the benefit of the company.

It will be said that the act now in question does not relieve the company from any forfeiture; but this is not enough, if a forfeiture has been incurred and the company is left in a condition to receive and enjoy what the Legislature has not the power to grant.

The ordinance permits this Legislature to grant only such relief as may be consistent *with the interest of the State*. And, in the opinion of the undersigned, it is not consistent with the interest of Texas to pass the bill referred to.

But aside from the policy of passing such a law, we respectfully enter our most solemn protest against the manner in which this bill progressed in the Senate. An effort was first made by the friends of the bill to suspend the rules and take the bill up out of its order, but the necessary two-thirds vote not having been obtained, the effort failed. The friends of the bill, having failed in a direct manner to place the bill

for consideration before the Senate, were permitted by a bare majority, and on one vote, to postpone all bills on their second reading, of which there were *one hundred and thirteen*. Bills on their third reading being thus reached by this character of parliamentary tactics, six bills were passed with great rapidity under the operation of the previous question, thereby cutting off all amendments and discussion. Three of these were not read, except by caption, eight bills on their third reading were postponed, and thus, at four o'clock in the evening, after remaining in session all day, this bill, for the relief of railroads, was reached and called by its number, 303. On the following morning, the President of the Senate decided that the one hundred and thirteen bills on their second reading were still postponed until bills on their third reading had been disposed of. Two of these were then taken up, and without being read a third time, otherwise than by their caption, as required by the Constitution, were declared passed. This bill, No. 303, for the relief of railroads, was then taken up, and without being read a third time (as required by the Constitution), was declared passed, and this under the operation of the previous question. A Senator, at this stage of the proceeding, rose in his place and announced that the bill not having been read on three several days, as required by Section 32 of Article 3 of the Constitution, and the reading not having been dispensed with by a four-fifths vote, as permitted by the same provisions of the Constitution, it was lost. The President of the Senate declared this point not well taken, and the Senate proceeded to the consideration of its legitimate business. After several bills had been disposed of, and while the Senate had under consideration House Bill No. 377, and an amendment to the same was under discussion, a Senator rose to a question of privilege, and proceeded to move to amend the journal of yesterday to show that Senate Bill No. 303 was read the third time. This the Senate refused to do by almost an unanimous vote, one vote being in the affirmative. A motion was then made to reconsider the vote on Senate Bill No. 303, which again, under the operation of the previous question, was carried, and the bill, after being read, was passed by less than two-thirds of a full Senate. The following point of order was made by a Senator and promptly overruled by the President of the Senate: 'That the Senate was considering House Bill No. 377, and without any motion or vote to postpone that bill, the Senator from Denton was allowed, as a privileged question, to introduce his motion to correct the journal, and that being voted down, a Senator was permitted by the Chair to move to reconsider the vote passing Senate Bill No. 303, and all this without a vote postponing said House Bill No. 377, and that the consideration of this bill No. 303, was and is out of order.'

The President of the Senate declared the point of order not well taken.

Senate Bill No. 303, for the relief of railroads, was then declared passed by a majority vote.

We impugn the motives of no one, but against the reckless manner in which all other business was swept aside by a small majority, and especially against the rulings of the President of the Senate, on the several points of order made, also, we respectfully enter our solemn protest.

WELLS THOMPSON,  
W. M. BURTON,  
J. H. McLEARY,  
L. J. STOREY,

A. P. McCORMICK,  
T. J. McCULLOCH,  
JNO. D. STEPHENS,  
A. W. TERRELL.

The undersigned favors granting relief to any railroad company which has gone to work in apparent good faith, and asks for that relief upon its own merits. He announced his attention not to support any bill granting relief to all railroads, and thus reviving charters about which he knows nothing.

He expressly denies any hostility to the Texas Pacific Railroad Company, and respectfully joins in protesting against the manner in which the bill granting relief to all railroad corporations, by extending their time for one month, was passed through the Senate. He impugns the motives of no actor in said proceedings.

JOHN S. FORD.

On motion of Senator Douglass, the protests were ordered spread upon the journals.

House Bill No. 212, "An Act to facilitate commerce and navigation within the navigable waters of the State of Texas," being unfinished business, was taken up.

Senator Moore in the chair.

Senator McCulloch moved the previous question on the passage of the pending bill.

Not seconded.

President *pro tem.* in the chair.

Senator Brown in the chair.

On motion of Senator Guy, Senators Storey and Thompson were temporarily excused.

Senator Piner moved a call of the Senate.

Call sustained.

Roll called.

ABSENT—Senator Smith.

On motion of Senator Piner, the call was suspended.

The bill then passed by the following vote:

YEAS—Senators Ball, Blassingame, Brady, Burton, Douglass, Guy, Henry F. M., Hobby, Ledbetter, Martin, Moore, Piner, Smith, Storey, Thompson, Wortham—16.

NAYS—Senators Brown, Crain, Edwards, Francis, Ford, Grace, Henry J. R., McLeary, McCormick, McCulloch, Stephens—11.

Senator Terrell was excused by the Senate from voting on the bill.

House Bill No. 24, "An Act defining what money and property are subject to taxation or exemption, and the mode of listing the same," was taken up and read first time, amendments of the committee pending.

Senator F. M. Henry in the chair.

On motion of Senator Edwards, Senator Douglass was excused for four days, commencing to-morrow morning.

On motion of Senator McLeary, Belvin, Engrossing Clerk, was excused for the day.

Senator Storey introduced a bill entitled: "An Act to confer additional jurisdiction upon the County Court of Caldwell county."

Read by caption, and referred to Judiciary Committee No. 1.

On motion of Senator Crain, the Senate adjourned until to-morrow morning at 9 o'clock.